IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8749 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JIVANBHAI V PANKHANIYA

Versus

A M C

Appearance:

MR SHAILESH C PARIKH for Petitioner

MR BP TANNA for Respondent No. 1, 2

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 28/07/2000

ORAL JUDGEMENT

The petitioner has challenged the order dated 15th October, 1988 at Annexure "A" to the petition, by which a punishment of putting him in the lowest scale of Rs. 800 per month was imposed on him as the outcome of the Departmental proceedings, which were held against him

on the charge that he had abused his superior officer and had attempted to assault him and further that during the duty hours, he was found to be sleeping.

The only contention that was raised on the basis of a decision of this Court in A.P. Kadri Vs. Gujarat State Road Transport Corporation and ors., reported in 1992 (2) GLH p.21 was that the enquiry officer had himself acted as a presenting officer. It was pointed out from the papers pertaining to the enquiry proceedings that the enquiry officer under the guise of recording statement of the petitioner, cross-examined him. From the question and answer form in which the statement of the petitioner was recorded by the enquiry officer, it is evident that the enquiry officer had virtually cross-examined the petitioner. Therefore, on the ratio of the decision of this Court in A.P. Kadri's case (supra), the enquiry proceedings were vitiated. It is not as if the petitioner had volunteered to give the statement.

Without going into the larger question as to the functions of an enquiry officer and the extent to which questions can be put in exercise of inquisitorial function, and following the decision in A.P Kadri's case (supra), which related to an employee of the same Corporation, the impugned order of punishment is set aside, leaving it open to the Corporation to take the proceedings afresh keeping in view the ratio of the decision in A.P. Kadri's case (supra).

Rule is made absolute accordingly with no order as to costs.

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*/Mohandas